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No. 80-427

IN THE

Supreme Court of the United States

OCTOBER TERM, 1980

FAIR ASSESSMENT IN REAL ESTATE ASSOCIATION, INC., J. DAVID CASSILLY, and LYNN F. CASSILLY,

Petitioners,

v.

GENE MCNARY, WILLIAM A. SKAGGS, EDMUND J. PUNG, CHARLES T. SCHNEIDER, FRANK J. ANTONIO, DONALD G. WILLIAMS, TOM R. OTTO, and STEPHEN C. SNYDER,

Respondents.

On Writ Of Certiorari To The United States Court Of Appeals For The Eighth Circuit

BRIEF FOR PETITIONERS

DAVID J. NEWBURGER
SUSAN SPIEGEL
STEVE VOSSMEYER
JAMES P. GAMBLE
NEWBURGER & VOSSMEYER
393 N. Euclid, Suite 300
St. Louis, Missouri 63108
314/361-2555
Attorneys for Petitioners

St. Louis Law Printing Co., Inc., 411 No. Tenth Street 63101 314-231-4477

QUESTION PRESENTED

Whether the District Court erred in dismissing this action on grounds that the Tax Injunction Act, 28 U.S.C. §1341, bars a suit at law for damages under the Fourteenth Amendment to the United States Constitution and 42 U.S.C. §1983 arising from Respondents' past discriminatory practices in assessing Petitioners' property and in taxing Petitioners.

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OPINIONS BELOW

The opinion of the United States Court of Appeals for the Eighth Circuit is reported at 622 F.2d 415, Pet. App. A-1 to A-2. The opinion of the United States District Court for the Eastern District of Missouri is reported at 478 F.Supp. 1231, Pet. App. A-3 to A-9.

JURISDICTION

The judgment of the United States Court of Appeals for the Eighth Circuit, *en banc,* was entered on June 19, 1980, affirming the judgment of the United States District Court for the Eastern District of Missouri, entered on November 7, 1979. The final mandate of the United States Court of Appeals for the Eighth Circuit was entered on July 15, 1980. The jurisdiction of this Court is invoked pursuant to 28 U.S.C. §1254(1). The Petition for Writ of Certiorari was filed on September 17, 1980 and granted on April 6, 1981.

STATUTORY AND CONSTITUTIONAL PROVISIONS INVOLVED

United States Constitution, Amendment XIV, Section 1: No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

28 U.S.C. §1341: The district courts shall not enjoin, suspend or restrain the assessment, levy or collection of any tax under State law where a plain, speedy and efficient remedy may be had in the courts of such State.

28 U.S.C. §1342: The district courts shall not enjoin, suspend or restrain the operation of, or compliance with, any order affecting rates chargeable by a public utility and made by a State administrative agency or a rate-making body of a State political subdivision, where:

(1) Jurisdiction is based solely on diversity of citizenship or repugnance of the order to the Federal constitution; and,

(2) The order does not interfere with interstate commerce; and,

(3) The order has been made after reasonable notice and hearing; and,

(4) A plain, speedy and efficient remedy may be had in the courts of such State.

42 U.S.C. §1983: Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the proper proceeding for redress.

Missouri Constitution, Article X, Section 3: Taxes may be levied and collected for public purposes only, and shall be uniform upon the same class of subjects within the territorial limits of the authority levying the tax. All taxes shall be levied and collected by general laws and shall be payable during the fiscal or calendar year in which the property is assessed. Except as otherwise provided in this constitution, the methods of determining the value of property for taxation shall be fixed by law.

Mo. Rev. Stat. §137.080: Real estate and tangible personal property shall be assessed annually at the assessment which commences on the first day of January.

STATEMENT OF THE CASE

Since 1961, residential property in St. Louis County, Missouri has not been systematically reassessed for real estate tax purposes. J.A. 7. In 1961, the last such assessment was completed. J.A. 7.

As a technical matter, residential property on the Assessor's books is reassessed each year. Mo. Rev. Stat. §137.080. However, in the absence of a systematic reassessment process, the previous year's assessment is ordinarily carried forward to

the current year. Thus, by 1977, the average assessed value of property in St. Louis County was 22.2% of the average value at which it would have been appraised, had that been done at current fair market value (the "appraised value"). J.A. 7.

Since at least 1974, Respondent Frank J. Antonio, the Assessor for St. Louis County and his successor in February 1978, Charles T. Schneider (together, the "Assessors"), placed new homes, including that of Petitioners J. David Cassilly and Lynn F. Cassilly (the "Casillys"), on the assessment books for St. Louis County at 33 1/3% of the homes' appraised values at the time of their initial assessment. J.A. 5, 8. Thus, the Assessors have adopted a practice of permitting older properties to be assessed at some 22% of their current true market values while they assess new homes at 33 1/3% of their current true market values.

Notwithstanding this practice, the Assessors have long acknowledged the need for reassessment. J.A. 8. They have collected information and made monthly reports to the State Tax Commission showing the percentage proportion of assessed values of older homes to their sales prices; and these percentages have progressively declined. J.A. 8. They were told by the Missouri State Auditor in a 1975 report that average assessed values were 22.8% of average sales prices in 1974. J.A. 8. They were told in a State Tax Commission sponsored report that average assessed values were 22.2% of average appraised values in 1977. J.A. 8. But they did not reassess, and they did not adjust the assessments of new property so that they would be roughly comparable to the assessments of property throughout the county.

In 1975, Petitioner J. David Cassilly and others initiated a lawsuit seeking reassessment. As a result, the state circuit court ordered Respondent Antonio to reassess all real property located in St. Louis County. *State ex rel. Cassilly* v. *Riney,* No. 374450, Div. 5. (St. Louis County, Mo., Cir., Aug. 17, 1977, *on*

rehearing, Sept. 26, 1977). On direct appeal, the Missouri Supreme Court reversed the court's order for reassessment on grounds that the State Tax Commission should supervise the process. *State ex rel. Cassilly* v. *Riney*, 576 S.W.2d 325 (Mo. 1979)(*en banc*). In so holding, however, the court stated that the stipulated facts manifested a violation of a Missouri constitutional provision analogous to the Equal Protection Clause of the Fourteenth Amendment as it applies to taxation. *Id.* at 328, *citing* Mo. Const. Art. X, §3.

Contemporaneously, the owner of a St. Louis County hotel appealed the January 1975 assessment of a new hotel facility at 33 1/3% of its 1975 fair market value while the prevailing assessments at that time for other, older property in the County were significantly lower than the 33 1/3% of fair market value. The Missouri Supreme Court ruled that the Assessors were required to make an adjustment in assessing the new property so that it would be assessed in a manner that did not consistently discriminate against owners of newly constructed property. *Breckenridge Hotels Corp.* v. *Leachman*, 571 S.W.2d 251, 252 (Mo. 1978) *(en banc), citing Sioux City Bridge Co.* v. *Dakota County*, 260 U.S. 441, 445-47 (1923).

The Cassillys' New Home

The Cassillys purchased their new St. Louis County home from a builder in 1974. J.A. 5,6. For the tax year 1975, Respondent Antonio assessed the home at $27,320.00, an amount that was approximately 33 1/3% of the then current true market value of the home. J.A. 6. In 1975 and 1976, the Cassillys paid real estate taxes based upon that assessment without appeal. J.A. 6. In 1977, they were again assessed at the same level but appealed that assessment to the County Board of Equalization. The Board reduced the assessed value to an amount that was approximately equal to 29% of the 1975 true market value. J.A. 6-7.

In 1978, the Assessor raised the assessed value of the property from the amount to which it had been lowered by the Board of Equalization in the previous year to the previous assessed level—$27,320.00. J.A. 7. The Cassillys again appealed their assessment; that appeal was still pending at the commencement of this lawsuit. At the time of commencement of the lawsuit, the Cassillys had not been notified of their assessed value for 1979, but they were informed and believed that it would be the same as the assessed value in 1978. J.A. 7.

As a result of these assessments, the Cassillys were taxed on the subject property $2,253.90 for 1975, $2,256.63 for 1976, $1,956.44 for 1977, and $2,378.21 for 1978. J.A. 6-7. Had their property been valued during the period 1975-79 at the average rate of 22.2%, the assessed value of the property would have been $18,195.00. Based upon that valuation, their taxes would have been $1,501.00 for 1975, $1,503.00 for 1976, $1,508.00 for 1977, and $1,443.00 for 1978.

This Lawsuit—The Cassillys' Claims

On July 2, 1979, Petitioners initiated the instant lawsuit in which the Casillys made the following allegations:

Assessing the Cassillys' property at 33 1/3% of its current true market value while permitting other property to be assessed at a considerably lower percentage of true market value constituted an invidious discrimination against them and a deprivation of property without Due Process of law, in violation of the Fourteenth Amendment to the United States Constitution and analogous portions of the Missouri Constitution. J.A. 7.

The Assessors engaged in a practice of reassessing property that had been assessed downward in cases in which property owners had appealed their prior assessments to the St. Louis County Board of Equalization.

The Assessors did this to the Cassillys in 1978 and 1979, and as a result the Assessors discriminated invidiously against the Cassillys and took their property without Due Process of law in violation of their rights under the Fourteenth Amendment to the United States Constitution and analogous portions of the Missouri Constitution. J.A. 11.

Respondent Gene McNary, who at all relevant times was the supervisor of St. Louis County, together with Respondent Edmund J. Pung, Director of Revenue of St. Louis County and his successor in 1977, Respondent William A. Skaggs (J.A. 5), had supervisory responsibility over the operations of the Assessors and, with knowledge, directed and acquiesced in the operations of the Assessors and the policies they were carrying out. Respondents Donald G. Williams, Steven C. Snyder, and Tom R. Otto were members of the State Tax Commission through at least March 1, 1979 (J.A. 5) and exercised general supervisory responsibility over the Assessors and participated in the execution of the policies of the other Respondents. J.A. 9.

The Respondents' conduct violated clearly established constitutional rights. The various Respondents acted maliciously, willfully, intentionally, knowingly, systematically, and invidiously against the Cassillys. J.A. 8, 9-10.

Each Respondent was individually liable, according to the particular years that he was involved in imposing the excessive assessments for damages in an amount that equalled the excessive taxes imposed, together with the Cassillys' expenses and damages suffered in seeking relief from unjust assessment and punitive damages. J.A. 10, 13-14.

This Lawsuit—FAIR's Claims

The Cassillys were joined in their Complaint by Fair Assessment in Real Estate Association, Inc. ("FAIR"), a not-for-profit membership corporation formed by real estate taxpayers in St. Louis County to promote equitable enforcement of real

estate property tax laws in the State of Missouri. J.A. 4. FAIR based its claim, the third claim for relief, upon its representational work on behalf of St. Louis County taxpayers. J.A. 12-13. Because of the district court's disposition of the case, no matter related to FAIR's claim has been disposed of and none is presented for review.

The Decisions Below

This action was initiated on July 2, 1979. On August 13, 1979, Respondents McNary, Skaggs, Pung, Schneider, and Antonio filed their joint motion to dismiss Petitioners' Complaint for failure to state a claim upon which relief may be granted and for lack of jurisdiction over the subject matter. On August 16, 1979, Respondents Williams, Otto, and Snyder filed an answer generally denying the allegations of Petitioners' Complaint.

After considering the pleadings, suggestions, and memoranda filed by the various parties, and without the introduction of evidence or oral argument, the district court entered its order on November 7, 1979, dismissing this action in its "entirety," on the basis of the Tax Injunction Act, 28 U.S.C. §1341. Petition for Certiorari, Appendix A-3 to A-9 (hereinafter referred to as "Pet. App. ____"). While the district court explored only the theories of the Cassillys, it dismissed FAIR's claims since it "is obviously in the same position as the individual plaintiffs." Pet. App. A-8. Therefore, without prejudice to FAIR's rights, the arguments here, as in the Court of Appeals, address only the Cassillys' rights.

On June 19, 1980, the Eighth Circuit Court of Appeals filed an order, without opinion, affirming the judgment of the district court, upon an equally divided vote of the en banc court. Pet. App. A-1 to A-2.

SUMMARY OF ARGUMENT

I

Petitioners alleged that the Respondents individually, acting under color of state law, have violated the Cassillys' rights to Equal Protection of the law and Due Process of law under the Fourteenth Amendment to the United States Constitution in their assessment of the Cassillys' home. In addition, Petitioners alleged damages resulting from these abridgements of their rights and prayed for compensation based upon those injuries. This should be sufficient to state a claim upon which relief may be granted. Petitioners have gone further to allege that the rights violated were clearly established constitutional rights and that Respondents maliciously, willfully, intentionally, knowingly, systematically, and invidiously imposed these assessments. Thus the allegations concern conduct that is beyond the protection of the Respondents' qualified immunity. Under the circumstances, the Cassillys have stated a claim upon which relief may be granted, and the District Court erred in dismissing this action, unless the Tax Injunction Act, 28 U.S.C. §1341, bars all such actions at law for damages.

II

The language of the Tax Injunction Act is plain and unambiguous: It bars federal courts from enjoining, suspending, or restraining the assessment, levy, or collection of state taxes. It does not bar federal courts from hearing Petitioners' action at law for damages. Applying the classical prescription for statutory interpretation, the first issue for determination is whether the language of the Act bars Petitioners' action. Since it does not and since the legislative history is consistent with the plain language of the Act, the Court should let the Act have its own, unambiguous meaning. The Tax Injunction Act does not bar this action.

III

The legislative history of the Tax Injunction Act shows that it was not enacted for purposes of barring actions like Petitioners', at law for damages. The purpose of the Act was to block nonresidents of a state from using federal courts to interfere with states' orderly procedures for assessing and collecting taxes, hearing orderly appeals in disputes over tax liabilities, and paying refunds when taxing was inappropriate. The purpose of the Act was to limit the use of the equity power of federal courts. It was to ensure that the federal courts, in exercising their equity jurisdiction, would not grant injunctions where adequate remedies exist either within the state courts or at law within the federal courts. It was not to bar recovery of damages in appropriate cases.

The legislative history of the Johnson Act, 28 U.S.C. §1342, whose language served as a model for the Tax Injunction Act, and of bills in Congress that were predecessors to both Acts, reveals that the purpose of the Tax Injunction Act was to bar the use of federal equity jurisdiction to disrupt state administrative processes. Such purposes are fully achieved without barring Petitioners' action. Petitioners seek damages relating to taxes they have already paid. Petitioners seek those damages not from the public treasury, but from the resources of those alleged to have willfully and maliciously injured them.

IV

Judicial precedent shows that the bar of the Tax Injunction Act is restricted to equity actions for injunctions, and to no others. Early in the life of the Act, the Court considered whether it extended to bar federal jurisdiction in actions for declaratory judgment. While finding that common law principles of federal equity jurisdiction barred such suits in appropriate instances, the Court refused to find that the Tax In-

junction Act imposed such a bar. *Great Lakes Dredge & Dock Co.* v. *Huffman,* 319 U.S. 293 (1943). The Court has never modified that position.

Beyond declaratory judgments, the Court has not expressly addressed whether the jurisdictional bar of the Act extends to suits other than injunctions. The district court in this case ruled that this was a tax refund case and that the Act barred such cases. Nevertheless, the lower courts are split on the subject, and if anything, the Court has impliedly ruled that the Act does not bar tax refund cases from federal court. Regardless, the arguments that might permit an extension of the Act's jurisdictional bar to declaratory judgment and tax refund actions do not support the further stretching of the Act to bar actions for damages. Actions like the present one, addressed against individuals for their malicious conduct and seeking damages individually, does not threaten the states' coffers.

Absent a compelling reason arising out of the language or history of the Act for it to bar actions at law for damages, the Court should recognize that the public interest in permitting citizens to pursue protection of their constitutional rights through §1983 actions weighs against any argument for stretching the Act to create that bar. All pronouncements by the Court on the subject have recognized the equity—as opposed to law—nature of the subject of the Act. The Court should now determine that the Act does not bar actions like Petitioners' at law for damages.

V

Some kinds of federal suits might very well interfere with state tax administration. However, this action for damages does not so threaten. Because the action is against public officials, the concern for tax administrators' protection expressed by some courts below is the same concern that is expressed for other public officials. That concern has spawned development

of qualified and absolute immunities for public officials as a matter of federal law.

Tax administrators have a qualified immunity. The exception to the immunity applies where, as Petitioners have alleged here, the officials have acted maliciously, in violation of clearly established rights. The immunity provides the protection that state tax authorities require to guarantee their free exercise of judgment. Extending the Tax Injunction Act to bar this action for damages in the light of doctrines of immunity for public officials would do nothing less than protect those officials from their bad faith violation of citizens' constitutional rights. The Court need not decide that the Act goes so far. It should not.

ARGUMENT

1. Unless The Tax Injunction Act Bars Their Action For Damages, Petitioners Have Stated A Claim Upon Which Relief May Be Granted.

Aside from whether the Tax Injunction Act, 28 U.S.C. §1341, bars their action, Petitioners have stated a claim for damages upon which relief may be granted. Petitioners have alleged that the various individual Respondents, acting under color of state law, have violated Petitioners' Equal Protection and Due Process rights under the Fourteenth Amendment to the United States Constitution. J.A. 7, 11. This is sufficient to state a claim under 42 U.S.C. § 1983 upon which relief may be granted. *Gomez* v. *Toledo,* 446 U.S. 635, 640 (1980); *Monroe* v. *Pape,* 365 U.S. 167, 171 (1961). Petitioners have gone a step further and alleged that the various Respondents' conduct was malicious, willful, intentional, systematic, and invidious. J.A. 8, 9, 10.

In addition, Petitioners have alleged economic injury to themselves in the form of excessive taxes and expenses and damages sustained in efforts to avoid the unjust assessments causing these excessive taxes. J.A. 10. They have prayed for compensation for these injuries. J.A. 13-14. The Court in *Carey* v. *Piphus,* 435 U.S. 247, 253-57 (1978), held that principles of compensation should govern damage awards in §1983 cases. The allegations in this Complaint are consistent with those principles. Therefore, this is a proper action for damages arising out of a §1983 claim.

By refusing to adjust the Cassillys' assessment, or cause it to be adjusted, to the percentage of assessed value to appraised value prevailing throughout St. Louis County during the subject time periods, the Respondents violated consitutional rights that had been clearly established since the Court's decision in *Sioux City Bridge Co.* v. *Dakota County,* 260 U.S. 441 (1923). There the Court ruled that there would be a violation "of the unifor-

mity clauses of state statutes and constitutions, and of the equal protection clause of the 14th Amendment" if some taxpayers' property is assessed at a significantly higher proportion of fair market value than others. *Id.* at 446. To avoid the violation, either "the great mass of underassessed property in the taxing district" must be raised to the level at which the complaining taxpayer is assessed, or the complaining taxpayer's assessment must be "reduced to the percentage of that value at which others are taxed, even though this is a departure from the requirement of statute." *Id. See also Sunday Lake Iron Co.* v. *Wakefield Township,* 247 U.S. 350, 353 (1918); *Greene* v. *Louisville & Interurban Railroad Co.,* 244 U.S. 499, 516-18 (1917). The principle was specifically brought to the attention of the Respondents by the Missouri Supreme Court in *Breckenridge Hotels Corp.* v. *Leachman,* 571 S.W.2d 251, 252 (Mo. 1978) (*en banc*).

By establishing that Respondents' conduct is contrary to a clearly established constitutional right, Petitioners may be able to prevail in a trial on the merits—notwithstanding Respondents' qualified immunity—merely by showing objectively that Respondents engaged in this conduct knowingly. As the Court said in *Wood* v. *Strickland,* 420 U.S. 308, 321 (1975):

> The official himself must be acting sincerely and with a belief that he is doing right, but an act violating [a complainant's] constitutional rights can be no more justified by ignorance or disregard of settled, indisputable law on the part of one entrusted with [the public responsibility] than by the presence of actual malice.

Regardless of whether Respondents acted in violation of clearly established constitutional principles, it may develop after discovery and trial on the merits that Respondents have, in fact, been guilty of actual malice, for Petitioners have also alleged that Respondents' conduct was malicious, willful, intentional, systematic, and invidious. J.A. 8, 9, 10.

Thus, Petitioners have stated facts that, in light of the law since at least 1923, support their claim that their Fourteenth Amendment rights were violated and that they have a right to recover damages. The allegations are there; the quetion is whether they will be proven. For purposes of reviewing the district court dismissal, these allegations should be taken as true. *E.g., Scheuer* v. *Rhodes,* 416 U.S. 232 (1974).

Unless the Tax Injunction Act stands as a bar to the enforcement of Petitioners' rights by the federal courts, the matter should be remanded for trial on the merits. Resolution of that question, as the Court said in *Rosewell* v. *LaSalle National Bank,* ____ U.S. ____, ____, 101 S. Ct. 1221, 1228 (1981), is one of statutory construction. Examination of the plain language of the statute, its legislative history, and its historic judicial treatment shows that the Act does not bar the action.

II. The Plain Language Of The Tax Injunction Act Bars Only Suits For Injunctions, Not Actions For Damages.

The Tax Injunction Act provides as follows:

> The district courts shall not *enjoin, suspend or restrain* the assessment, levy or collection of any tax under State law where a plain, speedy and efficient remedy may be had in the courts of such State. 28 U.S.C. §1341 (emphasis supplied).

In discerning the meaning of a statute, the starting point must be the language of the statute, *e.g., Owen* v. *City of Independence,* 445 U.S. 662, 635 (1980), and where that language is plan and umambiguous, that is ordinarily the end of the inquiry. *Rubin* v. *United States,* ____ U.S. ____, ____, 101 S. Ct. 698, 701 (1981); *T.V.A.* v. *Hill,* 437 U.S. 153, 184 n.29 (1978). On its fact, the Tax Injunction Act does not prohibit the district courts from awarding money damages to redress the previous willful deprivation of federally protected rights by state officials

in the assessment, levy, or collection of state taxes. If actions for damages were intended to be barred, "one would expect to find some mention of it." *Rosewell* v. *LaSalle National Bank*, ___ U.S. ___, ___, 101 S. Ct. 1221, 1234 (1981). There is no such mention. Instead, the unambiguous terms of the Act foreclose only the issuance of injunctions.

The Court has never before expressly endeavored to define the phrase establishing the jurisdictional bar. However, its characterization of the statute has consistently demonstrated adoption of a general meaning restricting the prohibition to injunctions. *See, e.g., Rosewell*, ___ U.S. at ___, 101 S. Ct. at 1228: "The Tax Injunction Act generally prohibits federal district courts from *enjoining* state tax administration . . . ." (Emphasis supplied.) Such interpretation naturally follows not only from the individual words in the statute, but from the structure in the sentence, which paraphrases the traditional standard for determining when equitable relief is available. *See, e.g., Matthews* v. *Rodgers*, 284 U.S. 521, 525 (1932).

Although unnecessary where the language is plain and unambiguous, it is often useful to examine the available aids to statutory construction. *See, e.g., Train* v. *Colorado Public Interest Research Group, Inc.*, 426 U.S. 1, 10-11 (1976). If the clear language and the legislative history are in accord, the Court need not examine the policy considerations underlying the statute. *Aaron* v. *Securities & Exchange Commission*, 446 U.S. 680, 695 (1980). It follows that where, as here, the language of the statute is readily discernible and sensible, and consistent with the legislative history, the Court should let the Act have its own, unambiguous meaning.

Petitioners in this case do not seek an order from the district court that is prohibited by the statute; they do not seek to "enjoin, suspend or restrain" the exercise of duty by the taxing authorities of the State of Missouri or St. Louis County. Rather, Petitioners seek damages from those individuals, who

under the color of state law, maliciously and willfully caused Petitioners damage by depriving them of their constitutional and legal rights to Due Process and Equal Protection under the Fourteenth Amendment. The statute's meaning is plain, and it does not apply to bar the action here.

III. The Legislative History Of The Tax Injunction Act Indicates That The Act Does Not Bar Petitioners' Action For Damages.

"[T]axes are the life-blood of government, and their prompt and certain availability an imperious need." *Bull* v. *United States,* 295 U.S. 247, 259 (1935). If the courts may be used to enjoin the collection of taxes until disputes over liability for them are resolved, private parties would thereby be afforded the wherewithal to cripple governments. As a result, the states have often set up procedures that require taxpayers who dispute tax liability to pay the tax to the government and test the question of their liability in actions for a tax refund. Sen. Rep. 1035, 75th Cong., 1st Sess. 1 (1937). *See, e.g.,* state laws described in *Great Lakes Dredge & Dock Co.,* 319 U.S. 293, 296-97 (1943); *Matthews* v. *Rodgers,* 284 U.S. 521, 529 (1932).

A. Statements in the Senate.

With this in mind, on February 19, 1937, Senator Bone of Washington introduced what ultimately became the Tax Injunction Act. In his introductory remarks, he explained the necessity for the legislation, saying that

> [t]he existing practice of the Federal courts to entertain tax-injunction suits makes it possible for foreign corporations [exercising the diversity jurisdiction of the federal courts] to withhold from a State and its governmental subdivisions taxes in such vast amounts and for such long periods as to disrupt State and county finances, and thus make it possible for such corporations to determine for

> themselves the amount of taxes they will pay. 81 Cong. Rec. 1415, 1416 (Feb. 19, 1937).

In support of his argument for the necessity of the legislation, Senator Bone had reprinted in the Congressional Record a letter from an Assistant Attorney General of the State of Washington. That author stated that restricting taxpayers to actions on refunds rather than injunctions

> makes it possible for the State and its various agencies to survive while long drawn out tax litigation is in progress. But if those to whom the Federal courts are open may secure injunctive relief against offensive taxes, we have presented the highly unfair situation of the ordinary citizen being required to pay first and then litigate, while those privileged to sue in the Federal courts need pay only what they choose and withhold the balance during years of litigation. *Id.*

Senator Bone and his supporters were concerned that the revenues of the State would be interfered with if the federal courts were to enjoin the collection of taxes pending the outcome of disputes over the liability therefor. Senator Bone and his supporters were bothered by the unfairness of allowing foreign corporations—especially the railroads—to obtain such injunctions in federal court through diversity jurisdiction when the state's own citizens were barred from such relief.

Senator Bone and his supporters were not worried about the possibility that a citizen might be able to sue a state tax official for damages where that tax official has in bad faith violated the constitutional rights of the citizen.

The Senate Judiciary Committee expressed similar concerns about deleterious interference with state revenues by foreign corporations. In its report, it said:

It is the common practice for statutes of the various States to forbid actions in State courts to enjoin the collection of State and county taxes unless the tax law is invalid or the property is exempt from taxation, and these statutes generally provide that taxpayers may contest their taxes only in refund actions after payment under protest. This type of State legislation makes it possible for the States and their various agencies to survive while long-drawn-out tax litigation is in progress. If those to whom the Federal courts are open may secure injunctive relief against the collection of taxes, the highly unfair picture is presented of the citizen of the State being required to pay first and then litigate, while those privileged to sue in the Federal courts need only pay what they choose and withhold the balance during the period of litigation.

The existing practice of the Federal courts in entertaining tax-injunction suits against State officers makes it possible for foreign corporations doing business in such States to withhold from them and their governmental subdivisions, taxes in such vast amounts and for such long periods of time as to seriously disrupt State and county finances. The pressing needs of these States for this tax money is so great that in many instances they have been compelled to compromise these suits, as a result of which substantial portions of the tax have been lost to the States without a judicial examination into the real merits of the controversy. Sen. Rep. No. 1035, 75th Cong., 1st Sess. 1-2 (1937).

These purposes expressed by the Senate Committee report are unrelated to Petitioners' case. And applying the Tax Injunction Act as a bar to Petitioners' case would not further these purposes in any way.

B. Statements in the House.

The House, in the report of the House Judiciary Committee, incorporated the Senate Report verbatim and thereby, presumably, the Senate Committee's purposes. H.R. Rep. No. 1503, 75th Cong., 1st Sess. 1-2 (1937). In its report, the House Committee also reprinted a legal opinion that it apparently adopted—an opinion that implies the Tax Injunction Act would not bar suits such as tax refund suits, assuming the proper jurisdictional prerequisities. See, for example, the following:

> You ask for some assistance on the question of whether the existence of an adequate remedy at law or in equity in the State courts, such as a tax-refund action, would prevent a foreign corporation pursuing the same remedy in the Federal court. In answer, will say [*sic*] that there might be circumstances under which the Federal courts would have no jurisdiction of such actions; for instance, where the refund action could be brought only against the State, or against the State officers under such circumstances as to amount to a suit against the State. Under the eleventh amendment to the Federal Constitution, of course, suits against the State, or suits which are in effect suits against the State, are not maintainable in the Federal courts.
>
> But if the refund action is permitted by State legislation or rules of decision against counties or county officers, and the money refunded has not yet reached the State exchequer, such actions, if maintainable in the State courts, could likewise be pursued in the Federal courts if the requisite elements of Federal jurisdiction existed. *Id.* at 2-3.

Thus, the House Committee manifested its purpose as barring actions that would interfere with the state's ability to collect revenue, and it indicated that it anticipated the continued availability of suits such as tax refund suits where the proper jurisdictional grounds lay—be they diversity of citizenship or matters of a federal question, such as §1983 actions.

That legal opinion also suggested the absence of any intent to bar actions at law in district courts. The contemporaneous equity practices precluded federal courts from enjoining state statutes only where a remedy at law existed in the *federal* courts. The proposed legislation merely added the availability of a remedy at law or equity in the *state* courts as a basis for precluding the exercise of federal equity jurisdiction. As a result, a foreign corporation could no longer obtain federal equitable relief merely by claiming the absence of a legal remedy in the federal court, so long as a legal or equitable remedy was available in the state court. *Id.* at 3-4. The state remedy was not meant to supplant remedies at law in the federal courts.

That the legislation was not directed at the abrogation of federal jurisdiciton over actions at law is confirmed by the opinion's adoption of the following quotation from *Matthews* v. *Rodgers:*

> Whenever the question has been presented, this Court has uniformly held that the mere illegality or unconstitutionality of a State or municipal tax is not in itself a ground for equitable relief in the courts of the United States. If the remedy at law is plain, adequate, and complete, the aggrieved party is left to that remedy in the State courts, from which the cause may be brought to this Court for review if any Federal question be involved (Judicial Code, sec. 237, U.S.C. title 28, sec. 344), or to *his suit at law in the Federal courts* if the essential elements of Federal jurisdiction are present. *Id.* at 4, *quoting Matthews,* 284 U.S. at 525-26 (emphasis supplied).

C. Inferences Drawn from the Congressional Action.

It is no accident that the statute speaks only of barring equitable remedies. The lawmakers acted at a time before the merger of law and equity in the federal courts. *See* P. Bator, P. Mishkin, D. Shapiro & H. Wechsler, *The Federal Courts and*

the Federal System 664-65 (2d ed. 1973). They intended suits at law to survive the jurisdictional bar. Had they intended otherwise, they would have said so. *Cf. Rosewell* v. *LaSalle National Bank*, ____ U.S. ____, ____, 101 S. Ct. 1221, 1234 (1981).

The Tax Injunction Act sought to fortify state legislative structures designed to protect state revenues by placing the financial onus of tax disputes on the taxpayers. *See* Sen. Rep. No. 1035, 75th Cong., 1st Sess. 1-2 (1937). The Act restored the vitality of the state "pay now, sue later" policies and rejected the devastating "sue now, pay later" device of federal injunctions to delay interminably state tax collections. The legislative history evidences no intent to insulate all things tax-related from every possible influence of the federal courts. Only the concrete barriers to the states' prompt and certain receipt of income—barriers that were erected by injunctions—were meant to fall.

D. Histories of Related Congressional Action.

Examination of the Tax Injunction Act's broader historical context confirms these conclusions. The Tax Injunction Act was not enacted in isolation, solely as a response to the special needs of state tax administration. Rather, it was part of a general movement to constrict the injunctive powers of the federal courts, particularly in relation to the states. The Court has recently acknowledged that

> [t]he Tax Injunction Act was only one of several statutes reflecting congressional hostility to federal injunctions issued against state officials in the aftermath of this Court's decision in *Ex parte Young*. *Rosewell* v. *LaSalle National Bank*, ____ U.S. at ____, 101 S. Ct. at 1233 n.28 (citation omitted).

Three years before the passage of §1341, Congress enacted the Johnson Act, 28 U.S.C. §1342, which provides in pertinent part:

> The district courts shall not enjoin, suspend or restrain the operation of, or compliance with, any order affecting rates chargeable by a public utility and made by a State administrative agency or a ratemaking body of a State political subdivison, where:
>
> (1) Jurisdiction is based solely on diversity of citizenship or repugnance of the order to the Federal Constitution; and,
>
> . . . .
>
> (4) A plain, speedy and efficient remedy may be had in the courts of such State.

Because the Tax Injunction Act was expressly modeled upon the Johnson Act, 81 Cong. Rec. 1416 (Feb. 19, 1937), the legislative history of the latter statute is particularly instructive. *See Rosewell* v. *LaSalle National Bank*, ____ U.S. at ____, 101 S. Ct. at 1229 (1981).

Examination of the Johnson Act and its legislative history reveals the same emphasis on disruptive injunctions as found in the Tax Injunction Act and its legislative history. The avowed aim of the legislation was to take away the advantage derived by public utility companies, predominantly foreign corporations, from access to the district courts under diversity jurisdiciton that was unavailable to residents of the state. Sen. Rep. No. 125, 73d Cong., 1st Sess. 3 (1933). The legislators were concerned about the ability of these public utilities to use federal injunctions to tie up state ratemaking processes.

The Senate Judiciary Committee Report depiction of the evils sought to be redressed by the proposed legislation has no relevance to an action for damages by two private individuals and a not-for-profit corporation, not directed against the public treasury and preceded by the state's undisturbed assessment, levy, and collection of its taxes: Foreign "monopolistic corporations" were able to evade the operation of state rate orders by

obtaining interlocutory federal injunctive relief. Because the federal courts tried the issues de novo, without regard to prior investigations and expert testimony in the state commissions, such cases remained pending for many years before their ultimate resolution, and all the while with injunctions barring enforcement of the states' orders. *Id.; see* 78 Cong. Rec. 1915-17 (Feb. 5, 1934).

In the meantime, according to the description in the Senate Report,

> the people for whose benefit the original order is made have nearly all died of old age; the order when finally entered may have no application whatsoever to the conditions existing at the time the order is entered. . . . The real object [of the public utilities] is to wear [their] opponents out by delay; the real object is not to get justice, but to prevent justice being done to them. Sen. Rep. No. 125, 73d Cong., 1st Sess. 8 (1933).

It was the "intolerable, interminable delays" to the implementation of state regulatory policies caused by federal injunctive relief that the Johnson Act sought to cure. *Cf. Perez* v. *Ledesma,* 401 U.S. 82, 128 n.17 (1971) (Brennan, J., concurring in part and dissenting in part) (preclusion of federal injunctions affecting state taxes prevents tax evasion and invasion of state budget).

Prior to enactment of the Johnson Act and the Tax Injunction Act, Congress had debated numerous proposals to contain federal equity jurisdiction. For example, in 1908, the Senate debated a variety of legislative proposals designed to "protect the States against the irresponsible granting of injunctions by Federal judges restraining the operation of State statutes." 42 Cong. Rec. 4852 (Apr. 17, 1908). One approach to alleviate the problem foreshadowed §1341:

> [N]o restraining order or writ of injunction shall be issued by any judge or court restraining the assessment or collection of any State, county, municipal, or district tax. 46 Cong. Rec. 312 (Dec. 14, 1910).

Debate on that proposal was deferred until consideration of the section of the bill relating to injunctions, and apparently the proposal was not discussed again in that session of Congress. *See id.* at 312-13.

Again, the discussion was substantively linked to the considerations underlying enactment of the Johnson Act and the Tax Injunction Act:

> The circuit courts of the United States and district judges sitting as circuit court judges have been in the habit recently of issuing *injunctions* the purpose of which was to *restrain and enjoin* State officers from putting into operation and effect certain State laws. The consequence has been that the interpretation of these laws has been taken, in the first instance, into Federal court, and in many instances the operation of these laws has been held up almost indefinitely by the action of an inferior Federal court. *Id.* at 313 (emphasis supplied). *See also* Sen. Rep. No. 1584, 62d Cong.,3d Sess. 1 (1913).

The Tax Injunction Act and its companion, the Johnson Act, are two products of a broad movement in Congress to contain the equitable powers of the district courts in relation to the states. Analysis of those acts in no way suggests a congressional intent to impose a similar limitation upon the district courts' jurisdiciton in actions at law. Absent a clear statement in the legistlative history supporting the conclusion that §1341 was to apply to damage actions, there is no justification for including damage actions within the class of actions barred by §1341. *Cf. Monell* v. *New York City Department of Social Services,* 436 U.S. 658, 701 (1978) (exclusion of cities from "persons" under §1983 not justified absent clear statement in legislative history).

IV. Consistent Extension Of The Precedents Dictates That The Tax Injunction Act Does Not Bar Petitioners' Action For Damages.

The Court has not previously considered the application of §1341 to an action at law for damages. It has considered its applicability to declaratory judgment actions and, perhaps, tax refund actions. Analyses in those areas suggest that, at the least, the Act should not be stretched to bar actions at law for damages.

A. Declaratory Judgment Suits.

Consider the Court's first treatment of the application of §1341 to actions for declaratory judgment. That was in *Great Lakes Dredge & Dock Co.* v. *Huffman,* 319 U.S. 293 (1943). There, the plaintiffs had requested a district court to declare the application of the Louisiana Unemployment Compensation Law to plaintiffs and their employees unconstitutional. As applied by Louisiana, the law would exact payment of an unemployment tax from Plaintiffs. The question considered was whether the district court could enter a declaratory judgment involving the constitutionality of a state tax statute; the Court said it could not.

In analyzing the question, the Court recognized, in dictum, that "the statutory demand [of §1341 may] be deemed restricted to prohibition of injunctions restraining collection of taxes," 319 U.S. at 301. The Court did not premise the unavailability of federal jurisdiction upon the Tax Injunction Act. Instead, it ruled that declaratory judgments are in the nature of equitable relief, subject to the Court's exercise of discretion to grant or withhold relief upon traditional equitable grounds. *Id.* at 300.

The relevant requitable grounds were found in *Matthews* v. *Rodgers,* 284 U.S. 521 (1932), where the Court had held that the "federal courts of equity" should exercise their discretion to withhold injunctions of state tax collections—except where the

state fails to provide a plain, adequate, and complete remedy—in order to avoid the interference with state fiscal operations resulting from such injunctions. 284 U.S. at 525-26. Because it concluded, in *Great Lakes,* that those equitable considerations applied with equal force to dictate the denial of declaratory relief, the Court found it "unnecessary to inquire whether the words of the [Tax Injunction Act] may be so construed as to prohibit a declaration by federal courts concerning the invalidity of a state tax." 319 U.S. at 299.

Characterizing the Tax Injunction Act as a legislative endorsement of the principles governing the exercise of jurisdiction by "federal courts of equity" as expressed in *Matthews, id.* at 298-99, the Court determined that the traditional equitable discretion of the district courts in equity cases survived enactment of the statute—§1341—specifically commanding the courts to withhold injunctive relief in cases involving state taxes. *Id.* at 301.

It is true that some lower federal courts have taken the additional step of interpreting the Tax Injunction Act as a bar to declaratory judgments. *See, e.g., Fulton Market Cold Storage Co.* v. *Cullerton,* 582 F.2d 1071, 1074 (7th Cir. 1978), *cert. denied,* 439 U.S. 1121 (1979). But the Court has not gone so far. For example, in recognizing the "continuing validity" of *Great Lakes* in 1971, Justice Black, speaking on behalf of the Court, quoted the very language of that case quoted above in expressing the view that declaratory judgments were prohibited by the exercise of the traditional federal equity doctrine and not the Tax Injunction Act. *Samuels* v. *Mackell,* 401 U.S. 66, 71 (1971). More recently, the Court confirmed that principles of federal *equity,* not the Tax Injunction Act, barred federal declaratory judgments regarding state tax administration. *Rosewell* v. *LaSalle National Bank,* ___ U.S. ___, ___, ___, 101 S. Ct. 1221, 1229 n.15, 1235 n.33 (1981). None of these principles of equity, of course, applies to this action at law for damages.